

a credit against its income tax liability in an amount equal to 20 percent of the sum of the eligible differential wage payments made to qualified employees during the taxable year. The definition of eligible differential wage payments for purposes of the § 45P credit is the same definition enacted in new § 3401(h) discussed in Section III, above. The amount of eligible differential wage payments that may be taken into account for the taxable year is limited to \$20,000 per qualified employee, resulting in a maximum credit for a taxable year of \$4,000 per qualified employee. An employee is a qualified employee if he or she has been an employee of the taxpayer for the 91-day period immediately preceding the period for which differential wage payments are made. An employer is an eligible small business employer if it employed an average of fewer than 50 employees on business days during the taxable year and provides differential wage payments under a written plan to every qualified employee. For purposes of determining an employer's eligibility, the rules of § 414(b), (c), (m) and (o) apply, under which the members of a controlled group and other related entities are treated as a single employer.

Section 45P(c) provides a rule to coordinate the § 45P credit with other credits under Chapter 1 of the Code (§§ 1 through 1400T) that are calculated taking into account employee compensation. Under this rule, the amount of any such other credit determined with respect to compensation of an employee must be reduced by the amount of the § 45P credit determined with respect to that employee.

Q-20. In what circumstances does the credit under § 45P reduce the amount of another credit?

A-20. The amount of another credit under Chapter 1 of the Code determined with respect to compensation of an employee must be reduced by the amount of the § 45P credit determined with respect to that employee if: (1) compensation paid in the current taxable year is an expense used directly in determining the amount of the other credit, (2) military differential wage payments are a type of compensation that can be taken into account in determining the amount of the other credit, and (3) the military differential wage payments taken into account in determining the employer's

§ 45P credit are also taken into account in determining the other credit.

Comments Requested

The Service is considering issuing additional guidance regarding the above sections of the HEART Act, and comments are requested regarding such possible guidance. Written comments should be submitted by April 9, 2010. Send submissions to CC:PA:LPD:DRU (Notice 2010-15), Room 5203, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, DC 20044. Comments may be hand delivered between the hours of 8 a.m. and 4 p.m., Monday through Friday, to CC:PA:LPD:DRU (Notice 2010-15), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking portal at <http://www.regulations.gov> (Notice 2010-15). All comments will be available for public inspection.

DRAFTING INFORMATION

The principal authors of this notice are Robert M. Walsh of the Employee Plans, Tax Exempt and Government Entities Division and Joseph Perera of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding Sections I through VI of this notice, please call the Employee Plans taxpayer assistance number between 8:30 a.m. and 4:30 p.m. Eastern time, Monday through Friday at (877) 829-5500 (a toll-free number) or email Mr. Walsh at RetirementPlanQuestions@irs.gov. For further information regarding Section VII of this notice, please contact Mr. Perera at 202-622-6040 (not a toll-free number).

Haiti Earthquake Occurring in January 2010 Designated as a Qualified Disaster Under § 139 of the Internal Revenue Code

Notice 2010-16

This notice designates the Haiti earthquake occurring in January 2010 as a qual-

ified disaster for purposes of § 139 of the Internal Revenue Code.

EARTHQUAKE DISASTER

On January 12, 2010, a magnitude 7.0 earthquake with numerous significant aftershocks affected southern Haiti ("Haiti earthquake"). The earthquake and resulting aftershocks affected approximately 3 million people, and caused extensive damage to dwellings, transportation networks, and infrastructure in Port-au-Prince and the surrounding areas of Haiti. *USAID Haiti — Earthquake Fact Sheet No. 1* (January 13, 2010) and *No. 7* (January 19, 2010).

This notice enables employer-sponsored private foundations to assist certain victims in areas affected by the Haiti earthquake and enables recipients to exclude qualified disaster relief payments from gross income.

QUALIFIED DISASTER RELIEF PAYMENTS EXCLUDED FROM RECIPIENT'S GROSS INCOME

Section 139(a) provides that gross income shall not include any amount received by an individual as a qualified disaster relief payment.

Section 139(b) provides that a qualified disaster relief payment includes any amount paid to or for the benefit of an individual—

(1) to reimburse or pay reasonable and necessary personal, family, living, or funeral expenses (not otherwise compensated for by insurance or otherwise) incurred as a result of a qualified disaster, or

(2) to reimburse or pay reasonable and necessary expenses (not otherwise compensated for by insurance or otherwise) incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster.

Under § 139(c)(3) the term "qualified disaster" includes a disaster resulting from an event that is determined by the Secretary to be of a catastrophic nature.

DESIGNATION AS QUALIFIED DISASTER

The Commissioner of Internal Revenue, pursuant to delegation by the Secretary, has determined that the Haiti earthquake occurring in January 2010 is an event of a catastrophic nature under § 139(c)(3). Therefore, the Haiti earthquake is designated as a qualified disaster under § 139.

SECTION 501(c)(3) ORGANIZATIONS

Employer-sponsored private foundations may choose to provide disaster relief to employee victims of the Haiti earthquake. Like all organizations described in § 501(c)(3), private foundations should exercise due diligence when providing disaster relief as set forth in Publication 3833, *Disaster Relief: Providing Assistance Through Charitable Organizations*.

DRAFTING INFORMATION

The principal author of this notice is Sheldon Iskow of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Mr. Iskow at (202) 622-4920 (not a toll-free call).